



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
OSCAR E. AGUILERA,)	
)	
Complainant,)	
)	Charge No.: 1996CF1271
and)	EEOC No.: 21B960558
)	ALS No.: 11025
VILLAGE OF HAZEL CREST)	
POLICE DEPARTMENT,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On September 20, 1999, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Oscar E. Aguilera. That complaint alleged that Respondent, Village of Hazel Crest Police Department, discriminated against Complainant on the basis of his national origin/ancestry by harassing him on the job.

This matter now comes on to be heard on Respondent's Motion for Summary Judgment. (The term "summary judgment" is a term used in the state and federal courts. The appropriate term in this forum is "summary decision," the term that will be used during this discussion.) Although he was offered the opportunity to file a response to the motion, Complainant declined. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On August 9, 2001, pursuant to Complainant's motion, this matter was stayed to allow Complainant to pursue his claim against Respondent in the federal district court.

2. On December 18, 2002, Judge Charles Norgle of the U. S. District Court granted summary judgment in favor of Respondent.

3. Judge Norgle's decision was not appealed and the time for appeal has expired.

4. The parties in this case are identical to the parties in the federal action.

CONCLUSIONS OF LAW

1. For purposes of applying the doctrine of *res judicata*, a summary judgment is a decision on the merits.

2. This case should be dismissed on the basis of *res judicata*.

DISCUSSION

On August 9, 2001, pursuant to Complainant's motion, this matter was stayed to allow Complainant to pursue his claim against Respondent in the federal district court. On December 18, 2002, Judge Charles Norgle of the U. S. District Court granted summary judgment in favor of Respondent. Judge Norgle's decision was not appealed and the time for taking an appeal has expired.

Respondent now moves for dismissal of this case, arguing that Complainant's claim is barred under the doctrine of *res judicata*. Complainant declined to file a response to Respondent's motion.

The doctrine of *res judicata* applies if three elements are met: 1) the parties in the present action must be the same parties, or in privity with the same parties, as the ones in the prior action, 2) the cause of action must be the same one as in the prior action, and 3) a decision on the merits must have been entered in the prior action. ***Housing Authority for LaSalle County v. Young Men's Christian Association of Ottawa***, 101 Ill. 2d 246, 461 N.E.2d 959 (1984). Those elements have been met in this case.

The parties and issues in this case are identical to those before the federal court. Moreover, for purposes of applying the doctrine of *res judicata*, a summary judgment is a decision on the merits. ***Webster and Spraying Systems Co.***, ___ Ill. HRC Dec. ___, (1985CF1737, July 26, 1991). The federal court's summary judgment has not been appealed, and the time for appeal has expired. As a result, it is clear that the doctrine of *res judicata* applies and there is no alternative to dismissal of this case.

RECOMMENDATION

Based upon the foregoing, it is clear that this case is barred under the doctrine of *res judicata*. Accordingly, it is

recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 28, 2003